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Hyundai Motor Finance Company

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

In re:

INCREDIBLE AUTO SALES, LLC,  
  
Debtor.

Case No. 06-60855

Hon. Ralph B. Kirscher

**CREDITORS' EXPEDITED JOINT MOTION RE. LIQUIDATION OF SOUTH  
SEATTLE AUTO AUCTION'S VEHICLES**

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COME NOW creditors, South Seattle Auto Auction ("SSAA"), and Hyundai Motor Finance Company ("HMFC"), collectively "Creditors", by and through their undersigned counsel, and move this Court to issue an order releasing possession of certain vehicles that were the subject of SSAA's reclamation claim to SSAA for the purpose of liquidating said vehicles. This motion is based upon the following:

1. SSAA has entered into stipulations with Debtor and HMFC that have been approved by order of the Court. Pursuant to the stipulations, Debtor shall segregate the vehicles subject to SSAA's reclamation claim, filed as Adverse Proceeding No. 06-00120, from the rest of Debtor's inventory. Also pursuant to the stipulation with SSAA, Debtor is to insure SSAA as a loss payee.
2. During the course of hearings on the 6th and 7th of November, the Court expressed concern that the vehicles would undergo daily depreciation if allowed to remain segregated without being sold. As a result, the Court directed the Debtor, Auto Auction of Montana, and SSAA to resolve how each of the vehicles is to be sold and still preserve AAM and SSAA's reclamation rights and HMFC's rights as a secured inventory lender.
3. SSAA has since attempted to resolve this issue with the interested parties without the need of filing a motion, *see a true and correct copy of undersigned's letter dated November 14, 2006, attached hereto as Exhibit "A" which is incorporated herein by reference*. However, the Debtor has not replied to SSAA's offer to discuss liquidation of its vehicles.
4. The proposal outlined below will alleviate the main concern of vehicles being segregated and not sold: daily depreciation of the vehicles. Liquidation of the vehicles at

auction through the wholesale market will likely occur faster than selling the vehicles through the Debtor's dealership, where some or all of the cars may not be sold at all.

5. The proposal also provides greater accountability for the proceeds of liquidation.

Since SSAA is 800 miles away and HMFC is 1250 miles away, checking dealer inventory and actively ensuring compliance with any liquidation agreement where the Debtor is selling the vehicles would be impractical for the Creditors. In addition, the proposal avoids potential accounting confusion since proceeds would be placed in a separate escrow account segregated from Debtor's trust accounts.

6. The Creditors propose the following treatment of the vehicles:

- a. The vehicles in Debtor's possession listed on Exhibit "B", *attached hereto and incorporated herein by reference*, shall be transported to SSAA's premises by SSAA prior to the end of business hours on Friday, December 15, 2006.
- b. Debtor or HMFC shall release the certificates of title they have in their possession for the vehicles listed on Exhibit "B" to SSAA prior to the end of the business hours on Friday, December 15, 2006.
- c. SSAA shall sell the vehicles for at least minimum wholesale floor price based upon Manheim Market Research (MMR) figures for cars in similar condition with similar mileage.
- d. All proceeds of the sale at auction of such vehicles shall be put into an escrow account located in Billings, Montana, pending resolution of adverse proceeding no. 06-00120. The account will be opened by the Lovell Law

Firm, P.C. Said firm will oversee the proceeds in the escrow account and will provide account statements at the request of Debtor or HMFC.

- e. All parties shall have rights in the proceeds of the sale of the vehicles to the extent that they presently have rights in the vehicles.

The Creditors do not waive any rights or remedies they may have with respect to the vehicles and/or proceeds from liquidating the vehicles by the Court granting this motion.

### **CONCLUSION**

For the foregoing reasons, SSAA and HMFC respectfully request that the Court enter an order implementing the proposed terms "a" through "e" listed above.

DATED this 1st day of December, 2006.

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By: /s/ Christopher P. Birkle  
Christopher Birkle  
Attorneys for South Seattle Auto Auction

DATED this 1st day of December, 2006.

HOLLAND & HART, LLP  
401 North 31<sup>st</sup> Street, Suite 1500  
Billings, MT 59101

By: /s/ Shane P. Coleman  
Shane P. Coleman  
Attorneys for HMFC

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**NOTICE TO DEBTOR(S)**

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**If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time, and location of the hearing by inserting in the caption the following:**

**NOTICE OF HEARING**

**Date:** \_\_\_\_\_  
**Time:** \_\_\_\_\_  
**Location:** \_\_\_\_\_

**If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.**

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this \_\_\_\_ day of November, 2006, a copy of this motion was served upon counsel of record by the following method:

<u>1,2,4, 5</u>	CM/ECF
_____	Hand Delivery
<u>3</u>	Mail
_____	Overnight Delivery Service
_____	Fax
_____	E-Mail

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